

Each of these amendments and the new claims is fully supported by the present specification, for example, the drawings and detailed description.

The Examiner has rejected claims 1-10 and 15-17 under 35 U.S.C. 102(b) as being anticipated by, or in the alternative under 35 U.S.C. 103(a) as obvious over Sandt. (Applicant assumes that the Examiner has meant to reject claims 1-10 and 15-16, in that claim 17 was canceled in the response filed on September 19, 2002). Applicant traverses this rejection as is it pertains to the present claims.

In the last response filed by applicant on September 19, 2002, applicant amended the claims to more clearly define the invention as being a composite (composite component or fence component) that is produced by a single coextrusion process. In response thereto, the Examiner states, on page 3 of the office action, that "Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself." The Examiner argues that the pole of Sandt "is identical to or slightly different than the claimed article."

In response, applicant has now further amended independent claims 1, 18 and 26 to more clearly define the invention as it is structurally distinguished from the prior art. Namely, the present amendments to the independent claims clarify that the present invention provides a layered composite that is a coextruded composite having a non-circular cross-sectional area which is substantially uniform along the length of the composite.

Sandt does not disclose, teach or suggest the present invention. For example, Sandt does not disclose, teach or even suggest a coextruded composite having a non-circular cross sectional area which is substantially uniform (constant in size and shape) along its length, as recited in the present claims. To the contrary, Sandt teaches a pole having a non-uniform cross-section

along its length. The Examiner recognizes on page 2 of the office action, that "Sandt does not disclose a pole made by a coextrusion process." As will be appreciated by those of skill in the art, Sandt's tapering poles are produced by a lay-up process which utilizes pre-formed sleeves and a liquid thermoplastic resin introduced therebetween. (See, for example, Sandt at column 4 lines 1-15). The result is a tapered pole having a non-uniform cross section along its length (See Sandt Figs. 1-5).

In response to the Examiner's comment that the pole of Sandt is "identical to or slightly different than the claimed article," applicant submits that the structural differences of the co-extruded composite of the present invention as defined in the newly amended claims are significant structural differences and render the claims patentable over Sandt.

In view of the above, applicant submits that the present invention, as recited in the present claims, is not anticipated by, and is unobvious from and patentable over Sandt under 35 U.S.C. 102(b) and 35 U.S.C. 103(a).

The Examiner has rejected claims 11-14, 18-25 and 34 under 35 U.S.C. 103(a) as being unpatentable over Sandt as applied to claim 1 in view of Finley. The Examiner argues that Finley supplies the missing feature of the wood fiber reinforcing filler of the core layer. Applicant traverses this rejection.

Applicant submits that even if the wood filler of Finley could be used in the liquid thermoplastic resin between Sandt's telescoping sleeves, the resulting wood-filled tapered pole would not make obvious the present invention as defined in the present claims. Sandt and/or Finley, alone or combined as suggested by the Examiner, do not disclose, teach or even suggest a coextruded composite having a non-circular cross-sectional area which is substantially uniform along the length of the composite.

The Examiner states on page 4, last paragraph of the office

action that "Sandt does not disclose the foamed core", but "Finley discloses the thermoplastic polymer...can be foamed". Applicant respectfully submits that there is no suggestion in Sandt to use a wood filled foam in place of its thermoplastic liquid core. Moreover, there is no motivation to apply these teachings of Finley to Sandt. Sandt teaches that the space between the inner and outer sleeves is filled with a thermoplastic liquid having reinforcing fibers or filaments. When solidified, the fibers or filaments are dispersed lengthwise along the pole. It would be contrary to Finley's purpose of lengthwise fibers or filaments to substitute a thermoplastic foam for the disclosed thermoplastic liquid. A foamed material would complicate the objective of having the filaments run lengthwise along the pole, a seemingly important aspect of the Sandt invention. (See for example, column 2, first full paragraph).

Thus, applicant submits that there would be no motivation for a person of ordinary skill in the art to combine Sandt and Finley for any purpose and, in any event, even if these references were to be erroneously combined, the combination would not make obvious the present invention as defined in the amended claims.

Applicant submits that the present claims are unobvious and patentable over both Sandt in view of Finley under 35 U.S.C. 103(a).

The Examiner has further rejected claims 11-14, 18-25 and 34 as being unpatentable over Sandt as applied to claim 1 in view of Stucky et al. Again, the Examiner states that Sandt does not disclose the wood fiber as a reinforcing filler of the core. The Examiner states that Stucky et al supplies this missing feature. Applicant traverses these rejections.

Applicant submits that neither Sandt nor Stucky et al, or in any combination thereof, disclose, teach, or suggest the present invention. For example, neither Sandt nor Stucky et al, or any

combination of Sandt and Stucky et al disclose, teach or even suggest a coextruded composite having a non-circular cross-sectional area which is substantially uniform along the length thereof. Stucky teaches a foamed polymer-fiber composite. Again, applicant respectfully submits that there is no suggestion in Sandt to use a foamed material in place of its thermoplastic liquid core. In addition, applicant submits that there is no motivation for a person of ordinary skill in the art to substitute the foamed polymer of Stucky et al for the liquid resin of Finley, and even if these references were to be erroneously combined, the resulting combination would not make obvious the present invention, as recited.

Applicant submits that the present claims are unobvious and patentable over Sandt in view of Stucky et al under 35 U.S.C. 103(a).

The Examiner has rejected claims 26-31 and 35 under 35 U.S.C. 103(a) as being unpatentable over Sandt in view of Finley and further in view of Kennedy et al. Additionally, based on similar reasoning, the Examiner has rejected claims 26-31 and 35 under 35 U.S.C. 103(a) as being unpatentable over Sandt in view of Stucky et al and further in view of Kennedy et al. Applicant traverses each of these rejections.

Kennedy et al, which discloses a metal fence system, does not disclose, teach or even suggest the present invention, and does not supply the deficiencies apparent in the teachings of the other prior art.

Applicant resubmits the arguments presented hereinabove with regard to the Examiner's rejections based on Sandt in view of Finley, and Sandt in view of Stucky. In brief, the combinations of these references, even in light of Kennedy et al, would not yield the fencing system defined in present claim 26 wherein, each of the fence posts and fence rails comprise a coextruded composite having

a non-circular cross sectional area which is substantially uniform along the length of each of the fence posts and fence rails. The application of the metal fencing system of Kennedy et al does not even suggest the deficiencies apparent in Sandt, Finley or Stucky.

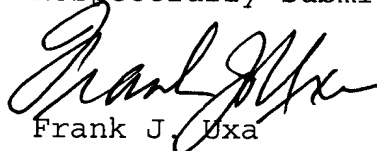
Applicant submits that the present invention, as now claimed, is not obvious and is patentable over Sandt, Finley and Stucky et al and Kennedy et al alone or in any combination, under 35 U.S.C. 103(a).

In addition, applicant submits that each of the present dependent claims is separately patentable over the prior art. For example, none of the prior art specifically disclose, teach or even suggest the present composites, composite components or fencing systems recited in any of the present dependent claims. Therefore, applicant submits that each of the present claims is separately patentable over the prior art.

In conclusion, applicant has shown that the present claims are not anticipated by and are unobvious from and patentable over the prior art under 35 U.S.C. 102(b) and 103(a). Therefore, applicant

submits that claims 1-16, 18-31, and 34-42 are allowable and respectfully requests the Examiner to pass the above-identified application to issuance at an early date. Should any matters remain unresolved, the Examiner is requested to call (collect) applicant's attorney at the telephone number given below.

Respectfully submitted,



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MARKED-UP VERSION TO SHOW CHANGES MADE

Claims 1, 18, and 26 have been amended as follows:

1. (Twice Amended) A composite having a length, the composite comprising:

an outer layer comprising a first polymeric material;

a core layer circumscribed by the outer layer and comprising a second polymeric material; and

an inner layer circumscribed by the core layer and comprising a third polymeric material, wherein the inner layer defines a hollow space;

the composite [having a non-circular cross-section] being a coextruded composite having a non-circular cross-sectional area perpendicular to the length [and being produced by a single coextrusion process] and the cross-sectional area being substantially uniform along the length of the composite.

18. (Twice Amended) A composite component having a length, the composite component comprising:

a weatherable outer layer comprising a first polymeric material;

a core layer circumscribed by the outer layer and comprising a wood-filled thermoplastic second polymeric material; and

an inner layer circumscribed by the core layer and comprising a thermoplastic third polymeric material, wherein the inner layer defines a hollow space, the composite component being a fence component or a decking component;

the composite component [having a non-circular cross-section] being a coextruded composite having a non-circular cross-sectional area perpendicular to the length [and being produced by a single

coextrusion process] and the cross-sectional area being substantially uniform along the length of the composite component.

26. (Twice Amended) A fencing system comprising:

a plurality of fence posts; and

a plurality of fence rails fastened to the plurality of fence posts so as to form a fence, wherein each of said fence posts and fence rails comprises

a weatherable outer layer comprising a first polymeric material;

a core layer circumscribed by the outer layer and comprising a wood-filled thermoplastic second polymeric material; and

an inner layer circumscribed by the core layer and comprising a thermoplastic third polymeric material, wherein the inner layer defines a hollow space;

each of said fence posts and rails being a coextruded composite having a length and a non-circular cross-sectional area [cross section] perpendicular to the length[, and each of said fence posts and rails being produced by a single coextrusion process] and the cross-sectional area being substantially uniform along the length.